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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/595,381

04/13/2006

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EXAMINER

HOEY, ALISSA L

ART UNIT

PAPER NUMBER

3765

MAIL DATE

DELIVERY MODE

10/11/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/595,381

Applicant(s)

ETZOLD ET AL.

Examiner

Alissa L. Hoey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 04/13/06.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

2. The drawings are objected to because the identifier numerals and lines are not consistently thick and uniform. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claims 20-37 are objected to because of the following informalities: the identifier numerals should be taken out of the claims, to prevent confusion. Appropriate correction is required.

4. Claim 21 is objected to because of the following informalities: claim 21 is dependent upon cancelled claim 1. Claim 21 has been examined as dependent upon claim 20. Appropriate correction is required.

5. Claim 25 is objected to because of the following informalities: claim 25 should begin in a new paragraph and spaced from claim 24. Appropriate correction is required.

6. Claims 25, 29 and 31 are objected to because of the following informalities: the term "zip fastener" should read "zipper fastener". Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 26 and 29 contains the trademark/trade name Velcro. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112; second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or

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trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe hook and loop fasteners and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 20-24, 34 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Rosenberg (US 1,889,701).

In regard to claim 20, Rosenberg teaches sports clothing capable of being worn for team sports that use a ball, especially soccer, rugby, handball or basketball, said sports clothing comprising an upper part (1) and a lower part (3), said upper part (1) and lower part (3) being designed in one piece when used as intended, characterized by overshorts (2) arranged over the lower part (3).

In regard to claim 21, Rosenberg teaches the sports clothing as claimed in claim 1; characterized in that the overshorts (2) are sewn onto the lower part (3) at the site where upper part (1) and lower part (3) are sewn together (21).

In regard to claim 22, Rosenberg teaches the sports clothing as claimed in claim 21, characterized in that upper part (1) and lower part (3) are sewn together (21).

In regard to claim 23, Rosenberg teaches the sports clothing as claimed in claim

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22, characterized in that upper part (1), lower part (3) and overshorts (2) are connected to one another by a single seam (21)

In regard to claim 24, Rosenberg teaches the sports clothing as claimed in claim 22, characterized in that the seam (21) connecting upper part (1) and lower part (3) runs all the way round the hip region (figures 1 and 2).

In regard to claim 34, Rosenberg teaches the sports clothing as claimed in claim 20, characterized in that the overshorts (2) are longer than the lower part (3).

In regard to claim 35, Rosenberg teaches the sports clothing as claimed in claim 20, characterized in that upper part (1) and/or lower part (3) and overshorts (2) are provided with at least one ventilation opening (see neck opening, sleeve openings and leg openings).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenberg.

Rosenberg teaches a garment as described above in claim 20. Rosenberg teaches the upper part having button and buttonhole fastener (8, 9) for opening the neck passage (3). However, Rosenberg fails to teach that the upper part has a zipper fastener, a hook and loop fastener or a lace fastener for the neck passage.

In regard to claim 29, it would have been obvious to have provided the fasteners to be zipper fasteners, hook and loop fasteners, lace fasteners, or button and buttonhole fasteners, because as long as the neck allows for a releasable opening the type of fasteners can be chosen from any equivalent and interchangeable fastener in the apparel arts.

In regard to claim 30, Rosenberg teaches the one fastener runs in the shoulder region (figure 1).

In regard to claim 31, Rosenberg teaches two fasteners extending outward from the neck passage across the shoulder region (figure 1).

12. Claims 20, 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweeney (US WO 0032067) in view of Pedrick (US 6,665,882).

In regard to claim 20, Sweeney teaches sports clothing that is capable of being worn for team sports that use a ball, especially soccer, rugby, handball or basketball. The clothing comprising an upper part (2) and a lower part (9), said upper part (2) and lower part (9) being designed in one piece when used as intended.

However, Sweeney fails to teach overshorts arranged over the lower part.

Pedrick teaches a pair of board shorts that have overshorts arranged over a lower short portion (see figures 2-4).

In regard to claims 25, 26 and 27, Sweeney teaches the upper part (2) and lower part (9) being connected to one another by a plurality of different fasteners, including hook and loop fasteners (figure 3).

However, Sweeney fails to specifically teaches zipper fasteners and lace fasteners, it would have been obvious to have provided the lower and upper parts connected by zipper, hook and loop or lace fasteners, because as long as the upper and lower parts are releasably connected together by fasteners, the fasteners can be chosen from any interchangeable or equivalent fasteners known in the apparel arts.

It would have been obvious to have provided the unitary garment of Sweeney with the double layer short portion of Pedrick, since the unitary garment of Sweeney provided with overshorts and inner shorts would provide for additional warmth to the user when wearing the garment.

13. Claims 33 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenberg in view of Munjone (US 5,598,586).

Rosenberg teaches a garment as described above in claim 20. However, Rosenberg fails to teach the lower part being made of elastic material and is cut such that it fits tightly around the wearer's thighs.

In regards to claims 33 and 36, Munjone teaches an athletic shorts garment having inner shorts and overshorts. The inner shorts are made of Lycra and the overshorts are made of nylon. Lycra and nylon are both elastic material that would fit tightly around the wearer's thighs (figures 3-5, column 4, lines 42-53 and column 5, lines 35-45).

It would have been obvious to have provided the unitary athletic garment of Rosenberg with the elastic material of Munjone, because the unitary athletic garment of Rosenberg provided with elastic inner shorts and over shorts would provide for an athletic garment that conforms to a user's body so as not to get caught on any athletic equipment or other athletes affecting performance.

14. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenberg in view of Hochman (US 5,418,978).

Rosenberg teaches a unitary garment as described above in claim 20. However, Rosenberg fails to teach the unitary garment having an elastic band arranged in the connecting area between an upper part and a lower part.

In regard to claim 28, Hochman teaches a unitary garment with an elastic band arranged in the connecting area between an upper part and a lower part (figures 1 and 2, identifiers 18, 19).

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It would have been obvious to have provided the unitary garment of Rosenberg with the elastic band arranged in the connecting area of Hochman, since the unitary garment of Rosenberg provided with an elastic band arranged in the connecting area would provide a unitary garment that provides a snug but adjustable fit at the waist for greater comfort and fit.

15. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenberg in view of Green (US 5,946,726).

Rosenberg teaches a unitary garment as described above in claim 20. However, Rosenberg fails to teach an elastic band arranged in the neck region.

Green teaches an athletic garment having an elastic band arranged in the neck region (24).

It would have been obvious to have provided the athletic unitary garment of Rosenberg with the elastic band in the neck region of Green, since the athletic unitary garment of Rosenberg provided with an elastic band in the neck region would increase tension in the neck area to better conform to the athlete's body.

16. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenberg in view of Diamond (US 2,141,239).

Rosenberg teaches a unitary garment as described above in claim 20. However, Rosenberg fails to teach the seam between the upper and lower portion being formed from an elastic thread.

Diamond teaches an elastic seam for garments (page 1, column 1, lines 4-10).

It would have been obvious to have provided the unitary garment of Rosenberg with the elastic seam of Diamond, since the unitary garment of Rosenberg provided with an elastic seam would provide for a garment having a seam connecting the upper and lower portion allowing for greater flexibility and movement of the user's body without jeopardizing seam strain and possible rupture.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and can be found cited in PTO-892 form submitted herewith.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ALH

/Alissa L. Hoey/
Primary Examiner, Art Unit 3765